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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/172,853	10/15/1998	CHRISTINE DUPUIS	5725.0134-01	9863

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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 04/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/172853

Applicant(s)

DAUPUIS

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/19/01
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 25-67 is/are pending in the application.
- Of the above claim(s) 25-42, 63 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 43-62, 64-67 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-62, 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sramek in view of EPA 590604 (EP '604) and Chem. Abstract 117546 ('546).

Sramek teaches an aerosol composition containing hair-setting resins (abstract). Hair setting resins which are acrylic polymers containing such monomers as methacrylic acid, hydroxymon^oesters of meth^crylic acid with C2 glycol, methyl methacrylate, and butyl acrylate are specified (column 5 lines 59-65). Sramek also teaches alcohol and water (col. 5 lines 54-65). Generally less than 10% water is disclosed (column 5 line 68-column 6 line 1). Water-soluble cosmetically acceptable basic compounds, including AMP (column 9 lines 22-34), perfumers, protein hydrolysates, preservatives, and silicones (column 9, lines 47-56), the last disclosed by applicant as a conditioning agent on page 30-second paragraph, are specified.

Applicants stipulate that EP '604 teaches the claimed "acrylates" copolymer (page 7 first two paragraphs), '604 teaches freeze-thaw stability in hair sprays (abstract). 2-20% water is specified (page 5 lines 20-27). The copolymer provides excellent performance characteristics, including feel and shine (page 2 lines 35-37).

'546 teaches a hair setting polymer comprising C2-8 alkyl acrylates, methylmethacrylate, hydroxyethyl-methacrylate and methacrylic acid. High effectiveness and water resistance are disclosed.

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It would have been obvious to one of ordinary skill to add the polymer of '604 to the composition of Sramek to impart freeze-thaw resistance and to use the polymer of '546 as a hair setting polymer in view of its high effectiveness and water resistance. As to the claimed 41% aqueous dispersion of the hydroxyacrylate, applicants disclose such is an item of commerce (example 6, page 39).

Applicants argue that EP '604 preferably is an aqueous composition whereas Sramek is not, however, applicants do not deny that each teaches water in overlapping amounts. As to the absence of water in Sramek's examples, a reference's teaching is not limited to its examples.

Applicants do not deny that the '604 polymer has excellent performance characteristics, including feel and shine. Applicants instead argue that such characteristics are limited to aqueous compositions, however, the '604 abstract also teaches up to 80% VOC.

Applicants lastly argue that Sramek does not teach a motivation to combine with '604. However, the motivation statement is directed to the addition of the polymer of '604 to Sramek not vice versa. From Sramek's general teaching of polymers containing the monomers of the '604 polymer, one of ordinary skill would recognize that the '604 polymer is, at the least, compatible with the Sramek composition.

'604 provides the motivation to combine.

No claims allowed.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to E. Webman at telephone number (703) 308-4432.


**EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500**